

## SB0059S02 compared with SB0059S01

~~text~~ shows text that was in SB0059S01 but was deleted in SB0059S02.

text shows text that was not in SB0059S01 but was inserted into SB0059S02.

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Senator Deidre M. Henderson proposes the following substitute bill:

### INDEPENDENT ENTITIES FINANCIAL TRANSPARENCY

#### DISCLOSURE

2014 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Deidre M. Henderson**

House Sponsor: \_\_\_\_\_

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#### LONG TITLE

##### General Description:

This bill modifies provisions related to making certain independent entities' financial information available to the public on the Internet.

##### Highlighted Provisions:

This bill:

- ▶ requires the Utah State Retirement Office to publicly report certain financial information on its website;
- ▶ defines "independent entity";
- ▶ requires an independent entity, except the Workers' Compensation Fund and the Utah State Retirement Office, to report certain financial information on the Utah

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Public Finance Website or via a link to its own website through the Utah Public Finance Website;

- ▶ provides specific reporting exclusions for certain independent entities; and
- ▶ makes technical changes.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

None

### Utah Code Sections Affected:

AMENDS:

**63A-3-401**, as last amended by Laws of Utah 2012, Chapter 94

**63A-3-402**, as last amended by Laws of Utah 2011, Chapters 46 and 417

**63A-3-403**, as last amended by Laws of Utah 2013, Chapters 84 and 310

**63A-3-404**, as last amended by Laws of Utah 2009, Chapter 310

ENACTS:

**49-11-1101**, Utah Code Annotated 1953

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*Be it enacted by the Legislature of the state of Utah:*

Section 1. Section **49-11-1101** is enacted to read:

#### **Part 11. Public Financial Disclosure**

**49-11-1101. Public financial information disclosure on website -- Exclusions.**

(1) The office shall provide the following financial information for the public on its website:

- (a) administrative expense transactions from its general ledger accounting system; and
- (b) aggregated employee compensation information by department.

(2) For purposes of this part, the office is not required to provide other information for public access on its website, if the disclosure of the information would conflict with the fiduciary obligations of the board, including:

- (a) revenue transactions; and
- (b) member and participant information.

Section 2. Section **63A-3-401** is amended to read:

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### Part 4. Utah Public Finance Website

#### 63A-3-401. Definitions.

As used in this part:

(1) "Board" means the Utah Transparency Advisory Board created under Section 63A-3-403.

(2) "Division" means the Division of Finance of the Department of Administrative Services.

(3) (a) "Independent entity," except as provided in Subsection (3)(b), is as defined in Section 63E-1-102.

(b) "Independent entity" does not include:

(i) the Workers' Compensation Fund created in Section 31A-33-102; or

(ii) the Utah State Retirement Office created in Section 49-11-201.

~~[(3)]~~ (4) "Participating local entity" means each of the following local entities, if the entity meets the size or budget thresholds established by the ~~[rules authorized]~~ board under Subsection ~~[63A-3-404(2)(a)]~~ 63A-3-403(3)(e):

(a) a county;

(b) a municipality;

(c) a local district under Title 17B, Limited Purpose Local Government Entities - Local Districts;

(d) a special service district under Title 17D, Chapter 1, Special Service District Act;

(e) a school district;

(f) a charter school; and

(g) an interlocal entity as defined in Section 11-13-103.

~~[(4)]~~ (5) "Participating state entity" means the state of Utah, including its executive, legislative, and judicial branches, its departments, divisions, agencies, boards, commissions, councils, committees, and institutions.

~~[(5)]~~ (6) "Public financial information" means records that are required to be made available on the Utah Public Finance Website ~~[or]~~, a participating local entity's website, or an independent entity's website as required by this part, and as the term "public financial information" is defined by rule under Section 63A-3-404.

Section 3. Section **63A-3-402** is amended to read:

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### 63A-3-402. Utah Public Finance Website -- Establishment and administration -- Records disclosure.

(1) There is created the Utah Public Finance Website to be administered by the Division of Finance with the technical assistance of the Department of Technology Services.

(2) The Utah Public Finance Website shall:

(a) permit Utah taxpayers to:

(i) view, understand, and track the use of taxpayer dollars by making public financial information available on the Internet for participating state ~~[entities' and]~~ entities, independent entities, and participating local entities, using the Utah Public Finance Website; and

(ii) link to websites administered by participating local entities or independent entities that do not use the Utah Public Finance Website for the purpose of providing participating local entities' or independent entities' public financial information as required by this part and by rule under Section 63A-3-404;

(b) allow a person who has Internet access to use the website without paying a fee;

(c) allow the public to search public financial information on the Utah Public Finance Website using ~~[those]~~ criteria established by the board;

(d) provide access to financial reports, financial audits, budgets, or other financial documents that are used to allocate, appropriate, spend, and account for ~~[the]~~ government funds, as may be established by rule under Section 63A-3-404;

(e) have a unique and simplified website address;

(f) be directly accessible via a link from the main page of the official state website;

(g) include other links, features, or functionality that will assist the public in obtaining and reviewing public financial information, as may be established by rule under Section 63A-3-404; and

(h) include a link to school report cards published on the State Board of Education's website pursuant to Section 53A-1-1112.

(3) The division shall:

(a) establish and maintain the website, including the provision of equipment, resources, and personnel as ~~[is]~~ necessary;

(b) maintain an archive of all information posted to the website;

(c) coordinate and process the receipt and posting of public financial information from

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participating state entities;

(d) coordinate and regulate the posting of public financial information by participating local entities and independent entities; and

(e) provide staff support for the advisory committee.

(4) (a) A participating state entity and each independent entity shall permit the public to view the [~~participating~~] entity's public financial information via the website, beginning with information that is generated not later than the fiscal year that begins July 1, 2008, except that public financial information for an:

(i) institution of higher education shall be provided beginning with information generated for the fiscal year beginning July 1, 2009~~[-]~~; and

(ii) independent entity shall be provided beginning with information generated for the entity's fiscal year beginning in ~~2013~~2014.

(b) [~~Not~~] No later than May 15, 2009, the website shall:

(i) be operational; and

(ii) permit public access to participating state entities' public financial information, except as provided in [~~Subsection~~] Subsections (4)(c) and (d).

(c) An institution of higher education that is a participating state entity shall submit the entity's public financial information at a time allowing for inclusion on the website no later than May 15, 2010.

(d) No later than ~~the first full quarter after~~ July 1, 2014, an independent entity shall submit the entity's public financial information for inclusion on the Utah Public Finance Website or via a link to its own website on the Utah Public Finance Website.

(5) (a) The Utah Educational Savings Plan, created in Section 53B-8a-103, shall provide the following financial information to the division for posting on the Utah Public Finance Website:

(i) administrative fund expense transactions from its general ledger accounting system; and

(ii) employee compensation information.

(b) The plan is not required to submit other financial information to the division, including:

(i) revenue transactions;

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(ii) account owner transactions; and

(iii) fiduciary or commercial information, as defined in Section 53B-12-102.

(6) (a) The ~~Utah Capital Investment Corporation, created in Section 63M-1-1207,~~ following independent entities shall each provide administrative expense transactions from its general ledger accounting system and employee compensation information to the division for posting on the Utah Public Finance Website or via a link to a website administered by the independent entity:

(i) the Utah Capital Investment Corporation;

~~(i) administrative expense transactions from its general ledger accounting system; and~~

~~(ii) employee compensation information~~, created in Section 63M-1-1207;

(ii) the Utah Housing Corporation, created in Section 35A-8-704; and

(iii) the School and Institutional Trust Lands Administration, created in Section 53C-1-201.

(b) For purposes of this part, ~~the office~~ an independent entity described in Subsection (6)(a) is not required to submit to the division, or provide a link to, other financial information, including:

(i) revenue transactions of ~~the Utah~~ a fund ~~of funds described~~ or account created in ~~Section 63M-1-1213~~ its enabling statute;

(ii) fiduciary or commercial information related to any subject if the disclosure of the information:

(A) would conflict with fiduciary obligations; or

(B) is prohibited by insider trading provisions; ~~and~~

(iii) information of a commercial nature, including information related to:

(A) account owners, borrowers, and dependents;

(B) demographic data;

(C) contracts and related payments;

(D) negotiations;

(E) proposals or bids;

(F) investments;

(G) the investment and management of funds;

(H) fees and charges;

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(I) plan and program design;

(J) investment options and underlying investments offered to account owners;

(K) marketing and outreach efforts;

(L) lending criteria;

(M) the structure and terms of bonding; and

(N) financial plans or strategies~~;~~; and

(iv) information protected from public disclosure by federal law.

~~[(6)]~~ (7) A person who negligently discloses a record that is classified as private, protected, or controlled by Title 63G, Chapter 2, Government Records Access and Management Act, is not criminally or civilly liable for an improper disclosure of the record if the record is disclosed solely as a result of the preparation or publication of the Utah Public Finance Website.

Section 4. Section **63A-3-403** is amended to read:

**63A-3-403. Utah Transparency Advisory Board -- Creation -- Membership -- Duties.**

(1) There is created within the department the Utah Transparency Advisory Board comprised of members knowledgeable about public finance or providing public access to public information.

(2) The board consists of:

(a) an individual appointed by the director of the Division of Finance;

(b) an individual appointed by the executive director of the Governor's Office of Management and Budget;

(c) an individual appointed by the governor on advice from the Legislative Fiscal Analyst;

(d) one member of the Senate, appointed by the governor on advice from the president of the Senate;

(e) one member of the House of Representatives, appointed by the governor on advice from the speaker of the House of Representatives;

(f) an individual appointed by the director of the Department of Technology Services;

(g) the director of the Division of Archives created in Section 63A-12-101 or the director's designee;

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(h) an individual who is a member of the State Records Committee created in Section 63G-2-501, appointed by the governor;

(i) an individual representing counties, appointed by the governor;

(j) an individual representing municipalities, appointed by the governor; and

(k) two individuals who are members of the public and who have knowledge, expertise, or experience in matters relating to the board's duties under Subsection (10), appointed by the board members identified in Subsections (2)(a) through (j).

(3) The board shall:

(a) advise the division on matters related to the implementation and administration of this part;

(b) develop plans, make recommendations, and assist in implementing the provisions of this part;

(c) determine what public financial information shall be provided by a participating state [and local entities] entity, independent entity, and participating local entity, if the public financial information:

(i) only includes records that:

(A) are classified as public under Title 63G, Chapter 2, Government Records Access and Management Act, or, subject to any specific limitations and requirements regarding the provision of financial information from the entity described in Section 63A-3-402, if an entity is exempt from Title 63G, Chapter 2, Government Records Access and Management Act, records that would normally be classified as public if the entity were not exempt from Title 63G, Chapter 2, Government Records Access and Management Act;

(B) are an accounting of money, funds, accounts, bonds, loans, expenditures, or revenues, regardless of the source; and

(C) are owned, held, or administered by the participating state [or] entity, independent entity, or participating local entity that is required to provide the record; and

(ii) is of the type or nature that should be accessible to the public via a website based on considerations of:

(A) the cost effectiveness of providing the information;

(B) the value of providing the information to the public; and

(C) privacy and security considerations;



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(d) evaluate the cost effectiveness of implementing specific information resources and features on the website;

(e) establish size or budget thresholds to identify those local entities that qualify as participating local entities as defined in this part, giving special consideration to the budget and resource limitations of an entity with a current annual budget of less than \$10,000,000;

(f) require participating local entities to provide public financial information in accordance with the requirements of this part, with a specified content, reporting frequency, and form;

(g) require an independent entity's website or a participating local entity's website to be accessible by link or other direct route from the Utah Public Finance Website if the independent entity or participating local entity does not use the Utah Public Finance Website; and

(h) determine the search methods and the search criteria that shall be made available to the public as part of a website used by an independent entity or a participating local entity under the requirements of this part, which criteria may include:

- (i) fiscal year;
- (ii) expenditure type;
- (iii) name of the agency;
- (iv) payee;
- (v) date; and
- (vi) amount.

(4) The board shall annually elect a chair and a vice chair from its members.

(5) (a) Each member shall serve a two-year term.

(b) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the remainder of the unexpired term.

(6) To accomplish its duties, the board [~~:(a) may meet as many as eight times during 2013; and (b) shall, after 2013,~~] shall meet as it determines necessary.

(7) Reasonable notice shall be given to each member of the board before any meeting.

(8) A majority of the board constitutes a quorum for the transaction of business.

(9) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

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- (a) Section 63A-3-106;
- (b) Section 63A-3-107; and
- (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and

63A-3-107.

(10) (a) As used in this Subsection (10):

(i) "Information website" means a single Internet website containing public information or links to public information.

(ii) "Public information" means records of state ~~[or] government,~~ local government, or an independent entity that are classified as public under Title 63G, Chapter 2, Government Records Access and Management Act, or, subject to any specific limitations and requirements regarding the provision of financial information from the entity described in Section 63A-3-402, if an entity is exempt from Title 63G, Chapter 2, Government Records Access and Management Act, records that would normally be classified as public if the entity were not exempt from Title 63G, Chapter 2, Government Records Access and Management Act.

(b) The board shall:

(i) study the establishment of an information website and develop recommendations for its establishment;

(ii) develop recommendations about how to make public information more readily available to the public through the information website; and

(iii) develop standards to make uniform the format and accessibility of public information posted to the information website~~[-and]~~.

~~[(iv) no later than November 30, 2013, report the board's recommendations and standards developed under Subsections (10)(b)(i) through (iii) to the executive director and the Legislative Management Committee.]~~

(c) In fulfilling its duties under Subsection (10)(b), the board shall be guided by principles that encourage:

(i) (A) the establishment of a standardized format of public information that makes the information more easily accessible by the public;

(B) the removal of restrictions on the reuse of public information;

(C) minimizing limitations on the disclosure of public information while appropriately safeguarding sensitive information; and

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(D) balancing factors in favor of excluding public information from an information website against the public interest in having the information accessible on an information website;

(ii) (A) permanent, lasting, open access to public information; and

(B) the publication of bulk public information;

(iii) the implementation of well-designed public information systems that ensure data quality, create a public, comprehensive list or index of public information, and define a process for continuous publication of and updates to public information;

(iv) the identification of public information not currently made available online and the implementation of a process, including a timeline and benchmarks, for making that public information available online; and

(v) accountability on the part of those who create, maintain, manage, or store public information or post it to an information website.

(d) The department shall implement the board's recommendations, including the establishment of an information website, to the extent that implementation:

(i) is approved by the Legislative Management Committee;

(ii) does not require further legislative appropriation; and

(iii) is within the department's existing statutory authority.

Section 5. Section **63A-3-404** is amended to read:

### **63A-3-404. Rulemaking authority.**

(1) After consultation with the board, and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the Division of Finance shall make rules to:

(a) require participating state entities to provide public financial information for inclusion on the Utah Public Finance Website;

(b) define, either uniformly for all participating state entities, or on an entity by entity basis, the term "public financial information" using the standards provided in Subsection 63A-3-403[~~(2)~~](3)(c); and

(c) establish procedures for obtaining, submitting, reporting, storing, and providing public financial information on the Utah Public Finance Website, which may include a specified reporting frequency and form.

(2) After consultation with the board, and in accordance with Title 63G, Chapter 3,

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Utah Administrative Rulemaking Act, the Division of Finance may make rules to:

(a) require a participating state or local entity to list certain expenditures made by a person under a contract with the entity; and

(b) if a list is required under Subsection (2)(a), require the following information to be included:

- (i) the name of the participating state or local entity making the expenditure;
- (ii) the name of the person receiving the expenditure;
- (iii) the date of the expenditure;
- (iv) the amount of the expenditure;
- (v) the purpose of the expenditure;
- (vi) the name of each party to the contract;
- (vii) an electronic copy of the contract; or
- (viii) any other criteria designated by rule.